

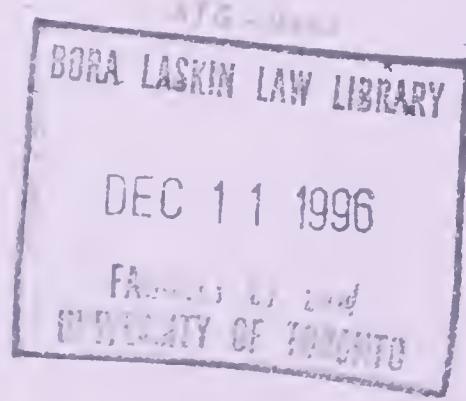
CHILDREN AND THE LAW

1997

Volume I

R. Bessner

storage



BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

CHILDREN AND THE LAW

1997

Volume I

R. Bessner



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/childrenlaw01bess_4

CHILDREN AND THE LAW

Table of Contents

Volume I

1. Children's Rights	1
2. Child Witnesses	
a) Psychological Studies on the Reliability of Children's Testimony	93
b) Competency Rules for Children	125
c) Corroboration Requirement for Children's Testimony	194
d) Applicability of the Hearsay Rule to the Statements of Children	211
e) Accommodation of The Child Witness	269
3. The Legal Representation of Children	404
4. Child Abuse	501
a) The Duty to Report	533
b) Statute of Limitations	560

Volume II

5. State Intervention in Pregnancies	1
6. Child Pornography	101
7. Medical Treatment of Children	268
8. Non-therapeutic Treatment of Children	319
9. Education	419
10. Young Offenders	468
11. United Nations	554

CHILDREN AND THE LAW

Volume I

1. Children's Rights

Introduction

- a) M.S. Wald, "Children's Rights: A Framework For Analysis" in *Children's Rights In The Practice of Family Law: A Framework for Analysis*, edited by B. Landau (Carswell) (1986) 1
- b) K.A. Hughes and H.T.G. Andrews, "Children's and Family Rights and the Role of the State in Custody and Child Protection Matters" in *Justice Beyond Orwell*, edited by R.S. Abella and M.L. Rothman (Les Éditions Yvon Blais Inc.) (1985) 25
- c) M.D.A. Freeman, *The Rights and Wrongs of Children*, (Pinter) (1983) 43
- d) B.C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights"*, (1976) B.Y.U.L. Rev. 605 56
- e) C.D. Gill, "Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?" (1991) 17 Ohio Northern Law Rev. 543 61
- f) J. Wilson, "Defining Children's Rights," (1994) 38 The Law Soc. of Upper Can. Gaz. 50 80
- g) C. Lasch, "Hillary Clinton, Child Saver: What she values will not help the family," *Harper's Magazine*, October 1992 85
- h) S. Fine, "Children Start to Flex Legal Muscles in Canada," *The Toronto Globe and Mail*, April 22, 1993 91

2. The Child Witness

(1) Psychological Studies on The Reliability of Children's Testimony

- a) G. Goodman and V. Helgeson, "Child Sexual Assault: Children's Memory and The Law," (1988) 12 Provincial Judges Journal 17 93

b) R.K. Oates, "Children as Witnesses," (1990) 64 Australian L.J. 129	105
c) M. Mian, K. Haka-Ikse, M. Lefkowitz, and C. McGoey, "The Child as Witness," (1991) 4 C.R. (4th) 359	111
d) J. Spencer and R. Flin, "Child Witnesses - Are They Liars?" (1989) 139 New L.J. 1601	119
e) D. Jones and R. Krugman, "Can A Three-Year-Old Child Bear Witness to Her Sexual Assault and Attempted Murder?" (1986) 10 Child Abuse and Neglect 253	121

(2) Competency Rules for Child Witnesses

Ontario Evidence Act, R.S.O. 1995, s. 18.
Canada Evidence Act, R.S.C. 1985, s. 16.

a) <i>R. v. Bannerman</i> (1966), 48 C.R. 110 (Man. C.A.)	125
b) <i>R. v. Budin</i> (1981), 58 C.C.C. (2d) 352 (Ont. C.A.)	143
c) <i>R. v. Fletcher</i> (1982), 1 C.C.C. (3d) 370 (Ont. C.A.)	148
d) <i>Khan v. The Queen</i> (1991), 79 C.R. (3d) 1 (S.C.C.)	156
e) <i>R. v. Marquard</i> (1993), 25 C.R. (4th) 1 (S.C.C.)	164
f) A. Peter Nasmith, "High Time for One Secular 'Oath,'" (1990) 24 The Law Soc. of Upper Can. Gaz. 230	184

(3) The Corroboration Requirement for Children's Testimony

Ontario Evidence Act, R.S.O. 1990, s. 18(2)

a) <i>R. v. Kendall</i> (1962), 132 C.C.C. 216 (S.C.C.)	194
b) <i>R. v. R.W.</i> (1992), 13 C.R. (4th) 257 (S.C.C.)	198
c) N. Bala, "Children as Witnesses in Sexual Abuse Cases: Statutory Reforms" - Excerpt in 1991 Canadian Bar Association Seminar on <i>Sexual Abuse of Children: Criminal & Family Law Proceedings</i> , 19-25	205

(4) The Applicability of The Hearsay Rule to the Statements of Children

- a) *Khan v. The Queen* (1991), 79 C.R. (3d) 1 (S.C.C.) (158)
- b) J. Spencer and R. Flin, "A Critical Look at the Hearsay Rule Concerning Children's Evidence" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 135-178 211
- c) D.A. Rollie Thompson, "Taking Children and Facts Seriously: Evidence Law in Child Protection Proceedings - Part I," (1988) 7 Can. J. of Fam. L. 11 234

(5) Accommodation of the Child Witness

Criminal Code, R.S.C. 1985, c. C-46, s.715.1 and 1993, c.45, s.486

- a) J. Spencer and R. Flin, "The Case for Change" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 282-305 269
- b) "The Child Witness in the Courtroom: Empowerment or Protection?" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 199-213 282
- c) C.F. Graham, "Sequestration Screens for Young Complainants in Criminal Prosecutions: Early Developments in Canada," (1990) 32 Crim. L. Q. 227 290
- d) *R. v. Levogiannis* (1993), 25 C.R. (4th) 325 (S.C.C.) 304
- e) *R. v. Paul M.* (1990), 1 O.R. (3d) 341 (Ont. C.A.) 320
- f) *R. v. L.* (1993), 25 C.R. (4th) 285 (S.C.C.) 326
- g) "Balancing the Rights of Children and Defendants: Effects of Closed-Circuit Television on Children's Accuracy and Jurors' Perceptions" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 214-239 366
- h) *Maryland v. Craig* (1990), 58 L.W. 5044 (U.S. Sup. Ct.) 379
- i) V. Paisley, "Testimony by The Child Witness in Criminal Court: Tactical and Ethical Issues in Examining and Cross-Examining a Child Complainant" (1988) 389

j) Ontario Medical Association Committee on Child Welfare, "The Child in Court: Some Changes Needed" (1987) 401

3. The Legal Representation of Children

a) S. Himel, "Representing Children" in *Canadian Child Welfare: Children, Families and the State*, N. Bala, J. Hornick, R. Vogl (eds.) (Thompson Educ. Pub.) (1991) 196-206 404

b) M. Peterson-Badali and R. Abramovitch, "Children's Knowledge of the Legal System: Are They Competent to Instruct Legal Counsel?" (1992) *Can. J. of Crim.* 139 415

c) J.C. Pearson, "Legal Representation Under The Young Offenders Act" in *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, A. Leschied, P. Jaffe and W. Willis (eds.), (1991) 114-127 427

d) J.W. Eayrs, "Some Problems of Professional Ethics in the Legal Representation of Minors," (1986) 20 Gazette 106 441

e) *Re W.* (1980), 27 O.R. (2d) 314 (Ont. Prov. Ct. Fam. Div.) 443

f) *Re C.* (1980), 14 R.F.L. (2d) 21 (Ont. Prov. Ct. Fam. Div.) 446

g) *Re Reid and Reid* (1975), 11 O.R. (2d) 622 (Ont. Div. Ct.) 453

h) *Lauro v. Lauro* (1988), 13 R.F.L. (3d) 189 (Ont. Dist. Ct.) 460

i) *Catholic Children's Aid Society of Metropolitan Toronto v. C.M. and D.L.* (1991), 35 R.F.L. (3d) 1 (Ont. Ct. Prov. Div.) 463

Official Guardian v. M (S.) (1991) 35 R.E.L. (3d) 297 489

i) *Strobridge v. Strobridge* (1994), 18 O.R. (3d) 753 (Ont. C.A.) at 757, 493

4. Child Abuse

(1) General

a) M. Freeman, "Children Who Are Wronged: The Problem of Child Abuse and Neglect" in *The Rights and Wrongs of Children*, (London: Francis Pinter) (1983) at 104 501

- b) E. Elmer, *Fragile Families, Troubled Children*, (Univ. of Pittsburgh Press) (1977) at 108 519
- c) N. Polansky, M.A. Chalmers, E. Buttenwieser and D. Williams in *Damaged Parents: An Anatomy of Child Neglect* (1981) at 1 523

(2) The Duty to Report

- a) *Child & Family Services Act*, R.S.O. 1990, c. C-11, s.72 533
- b) R. Vogl, "Initial Involvement" in *Canadian Child Welfare Law: Children, Families and The State*, N. Bala, J. Hornick & R. Vogl (eds.), (Thompson Educ. Pub.) (1991) 33-35 534
- c) *R. v. Cook* (1985), 46 R.F.L. (2d) 174 (Ont. C.A.) 536
- d) *R. v. Stachula* (1984), 40 R.F.L. (2d) 184 (Ont. Fam. Ct.) 541
- e) M. Bailey, "The Failure of Physicians to Report Child Abuse," (1982) 40 Univ. of Tor. Law Rev. 49 546
- f) F.S. Berlin, "Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children," (1991) 148 Amer. J. Psychiatry 449 555

(3) Limitation Periods

- a) N. Des Rosiers, "Limitation Periods and Civil Remedies for Childhood Sexual Abuse," (1992) 9 C.F.L.Q. 43 560
- b) *M. (K.) v. M. (H.)* (1992), 96 D.L.R. (4th) 289 (S.C.C.) 576
- c) S. Fine, "Ruling on incest case hailed as possible deterrent," *The Toronto Globe and Mail*, October 30, 1992 602
- d) N. Clevenger, "Statute of Limitations: Childhood Victims of Sexual Abuse Bringing Civil Actions Against Their Perpetrators after Attaining Age of Majority," (1991-1992) 30 J. of Fam. L. 447 603

